1951.

File No. S. Belgaum 9/51

Legal DEPARTMENT

E BRANCH

Subject:— Suits: Belgaum.

In the Court of the Civil Judge (S.D.), Belgaum.

-Civil Suit No. 137 of 1949.

Vinayak Vishnu Yallurkar — Plff.

Vs.

The State of Bombay & ors. — Defts.

Re: For possession of the suit lands & future mesne profits.

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File No. S. Belgaum 9/51

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Suits Belgaum.

C. S. No. 137 of 1949.

Vinayak Vishnu Yadlurkar

Vs.

State of Bombay and others

Re: For possession of the suit lands with future mesne profits.

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16. Gangaram Thakapa Lokulkar, aged 25, Maratha, - Agriculturist, residing at Vadagaon, Patil Galli, Taluka Shahapur.

17. Ganapati Nigapa Juvekar, Maratha by caste, aged 25, Agriculturist, residing at Vadagaon, Patil Galli, Taluka Shahapur. Defendants.

18. Parasharam Bharamanna Gadkari, Maratha by caste; aged 30, Agriculturist, residing at Vadagaon, Patil Galli, Taluka Shahapur.

Claim Rs. 918-12-0 for Court fee.
Rs. 15000-0-0 for Juridiction.

1. The description of the suit prpperty is as follows:-

Name of the village.	R.S.No.	Acre - Gnt	Assmt.	Present occupant.
Madagaon	89	4-4	38-0-0.	Deft No.2.
"	183	1-19	15-0-0	" 3.
"	198	0-7	1-8-0	" "
Old Belgaum (Madhavpur) Halagge.	55	2-6	10-0-0	Deft No.4.
"	337	2-19	14-0-0	Deft No.5.
"	518	1-10	11-0-0	
Vadageon	82	1-4	10-0-0	Deft No.7.
"	102	11-2	23-0-0	Deft No.6.
			122-8-0	

2. The above mentioned lands were granted in Inam to - Janardhan Ohango Yellurkar, the deceased grand father of the plaintiff in or about the year 1864 A.D. by the then Jahagirdars of Kurandawad Junior State, the grantee was to enjoy the lands as the owner permanently from generation to - generation as per terms of the grant. But as the lands were not in possession of the State, the Darbar could not hand over the grantee the actual possession of the lands. However the origional grantee succeeding in securing the actual possession of these landsby making private - arrangments with the then occupants. Thus the plff who is the grandson of the origional grantee, has acquired complete title over all the suit lands on the strenghh

Regular Civil Suit No.13/
1989

5 1

In the Court of the Civil Judge, Belgaum.

1: Vinayak Vishnu Yellurakar, aged 70, Caste Brahmin, occ. agriculturist, residing at vadagaon, Taluka Yellur. — PLFF.

Against.

1. The Collector of Belgaum and Chief Administrator of the Kurandawad Jr.State
2. Sitaram Mana Lakare, Caste Maratha, aged 55, Service by occupation, residing at Vadagaon, Taluka Yellur.
3. Shankar Bido Naik Shiddgi, Brahmin by caste, aged 45, occ. service, residing at Vadagaon, Taluka Yellur.
4. Bhimarao Annappa Chougale, Caste Jain, aged about 40, occ. Service Residing at Thalakwadi Thalakwadi, Belgaum.
5. Annappa Tawanappa Kundapp, Caste Jain, aged about 45, occ. Trade, Residing at Shahapur Avharya Galli. — Defendants.
6. Ganapatrao Tatyasaheb Chavhan, Caste Maratha, aged 50, occ. Military Pensioner, residing at Vadagaon
7. Krishna Irappa Patil, Caste Maratha, aged 30, occ. Gold-smith, residing at Vadagaon, Taluka Yellur.
8. Bharamana Sangappa Mannur, caste Jain, aged 30, Agriculturist, residing at Majagaon, Taluka Shahapur, Dist.Belgaum
9. Bharama Lakkapa Kalakumbi, Caste Jain, Aged 30, residing at Majagaon, Taluka Shahapur, Dist. Belgaum.
10. Vasudev Annappa Chougule, Caste Jain, Agriculturist, aged 25, residing at Thalakwadi, C/o Diwan Bahadur Chougule Pl
11. Choudappa Bellapa Kadsmani, Caste Jain, aged 30, Agriculturist, residing at Halag Taluka Belgaum, District Belgaum.
12. Bhairu Parashuram Khanukar alais Tarihalk caste Maratha, aged 40, Agriculturist, residing at Madhavpur, Bayat Galli, Taluka Shahapur, District Belgaum.
13. Bhujanga Kamanna Chatur, Maratha by caste aged 30, Agriculturist, residing at Vadagoan, Karbhari Galli, Taluka Shahapur
14. Parashuram Fakira Hawaldar, Maratha by caste, aged 50, Agriculturist, residing at Vadagaon, Karbhari Galli. Shahapur.
15. Mhatru Ananda Birje, Maratha, by caste, aged 40, Agriculturist, residing at Vadagaon, Taluka Shahapur.

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or the origional grant and also on the strength of his - continuous and open possession as owner for a period of more than 12 years adverse to the whole world. On both the- -se grounds the plff has become the full owner of the - suit lands.

3. The then Jahagirdars picked up some quarrel and - attached and resumed the possession of the suit lands about 25 years ago. The plff thereafter made attemptsfor setting this grievance redressed by moving the Political authori - -ties and Bombay Government in this matter; but the plff could not achieve his object. this was the only way left open to theplff as he could not file a regular civil suit in Court of Law against the Government of the State in accordance with the laws prevailing then in the state. - However recently the Darbar has kindly given permission to all persons to file a civil suit against the Government of the State by Notification published in theissue of the Stat Gazette dated 10th March 1946. Thus the cause of action has been accrued on that day to file this suit for posse - -ssion of the suit lands, and for future mense profits - against the Govt. and other defts who are to-day in actual possession of the suit lands.

4. The other defts Nos. 2 to 7 are respectively in - possession of the respective lands as shown in para No.1 above. They say that they have purchased these lands from the then rulers of the Kurandwad Junior State who are now represented by deft No.1. The plff denies in toto their alleged rights. Besides they can never have better title

then the deft No.1. Morever all defendants already aware about the plff's right before they derived their title - from the State. The deft cannot have better title than the plff. All defendants are, therefore, trespassers as against the plff. Defts Nos. 8 to 11 are the tenants of deft Nos. 2 to 5 respectively. Deft Nos. 12 to 18 are the tenants of defendant No.6.

5. The plff, therefore, files this suit for possession of the suit lands and future mense profits. The deft-No.1 has been served on 9th March 1940 with two months' notice as required by sec.80 of the Civil Procedure Code. The cause of action arose on 10th March 1946, the date of publication of the above mentioned State Proclamation in the State Gazette. The plffsubmitts that the period of limitation for filing this suit is 12 years commencing from 10-3-1946. Even assuming that this period is for three years only still the suit is filed within the period allowed by the law of Limitation as the plff is entitled to add this period of two months required for the notice and the period during which the Court remained closed for summer vacation.

6. The suit lands are situated within the Special Jurisdiction of this Court, and the cause of action also arose within the Jurisdiction of this Court. Therefore Court has jurisdiction to try this suit.

7. The total assessment of the suit lands is Rs.122-8-0. On multiplying it by 7½ it comes to Rs.918-12-0. This is the valuation for the purpose of the paying Court fee. The valuation of this suit for jurisdiction is Rs. 15.00/-, the market value of this lands.

8. The plff. therefore, prays that:-

(1) The possession of thelands mentioned in para No.1 of the plaint should be given to the plff.

(2) The future mense profits should be determined and awarded to the plff.

(3) The costs of this suit should be given to the plff.

(4) Any other relief to which the plff may be found entitled should also be given.

(5) The plff should be allowed to amend the plaint if the necessity arises.

The plff prays that the decree may be passed accordingly.

dated.

51

Regular Civil Suit No.137/1949.

In the Court of the Civil Judge,Sr.Dn.Belgaum.

1. Vinayak Vishnu Yallurkar,aged 70,Caste Brahmin, Occupation Agriculture, Residing at Vadagaon, Taluka Yellur. } Pltff.

Vs.

1. The Collector of Belgaum and Chief Administrator of Kurundwad Junior state.
2. Sitaram Nana Dakare,Caste Maratha, Aged 55, service by occupation,residing at Vadgaon,taluka Yallur.
3. Shankar Bindo Naik Shindgi,Brahmin,by caste,aged 45 Occupation Service, Residing at Vadgaon,taluka Yallur
4. Bhimawao Annappa Chaugula,caste Jain,aged 40, occu--pation Service, residing at Thalakwadi,Belgaum.
5. Annappa Tavanappa Kundappa,Caste Jain,aged about 45,occupation trade, residing at Shahapur Charya galli; } Defts.
6. Ganapatrao Tatyasaheb Chavan,caste,Maratha,aged 50 occupation Military pensioner, residing at Vadgaon, taluka Yallur.
7. Krishna Irappa Patil, caste Maratha, aged 30,occupa--tion Gold-smith,residing at Vadagaon,tal:Yallur.
8. Bharmanna Sangappa Mannur,caste Jain,aged 30,agri--culturist residing at Majgaon,tal:Shahapur,Dist:Belgaum.
9. Bharma Lakappa Kulkumbi,caste Jain,agriculturist, aged 30,residing at Majgaon,tal:Shahapur,Dist:Belgaum.
10. Vasudeo Annappa Chaugule,caste Jain, agriculturist aged 25, residing at Thalakwadi,C/O diwan Bahadur Chaugule,Pleader.
11. Chaudappa Bellappa Kademani,caste Jain,aged 30, Agriculturist, residing at Halage,tal:Bgm.Dist:Bgm.
12. Bhairu Parashram Khanukar alias Tarihalkar, residing at Madhavpur,rayat galli,Tal:Shahapur,Dist:Belgaum.
13. Bhujanga Kamanna Chatur, Maratha by caste. aged,30,Agrifulturist, residing at Vadgaon,Karbari galli, taluka Shahapur,district Belgaum.
14. Parashram Fakira Havaldar, Maratha by caste,aged 50,agriculturist residing at Badgaon, Karabari galli taluka Shahapur.
15. Bhatru Ananda Birje, Maratha by caste,aged 40, Agriculturist,residing at Vadgaon,tal: Shahapur. } Defts.
16. Gangaram Thakappa Lokulkar,aged 25, Maratha , Agriculturist, residing at Vadgaon Patil galli, taluka Shahapur.
17. Ganapati Ningappa Juvekar,Maratha by caste,aged 25, Agriculturist, residing at Vadgaon, -do- -do-
18. Parashram Bharmanna Gadkari,Maratha by case,aged 30 agriculturist, residing -do- -do- -do-

Claim Rs. 918-12-0. for Court fee.
Rs.15,000--0-0.for Jurisdiction.

1. The description of the suit property is as follows:-

Name of the village.	R.S.No.	Acres-Gunthas.	Assessment.	Present occupant.
Majagaon.	89.	4- 4.	38- 0-0.	Deft.No.2.
-do-	183.	1-19.	15- 0-0.	Deft.No.3.
-do-	193.	0- 7.	1- 8-0.	-do- -do-
Old Belgaum. (Madhavpur).	65.	2-6.	10- 0-0.	Deft.No.4.
Halage.	337.	2-19.	14- 0-0.	Deft.No.5.
-do-	518.	1-10.	11-0-0.	
Vadgaon.	82.	1- 4-.	10- 0-0.	Deft. No.7.
Vadagaon.	102.	11- 2.	23-0-0.	Deft.No.6.
			122- 8-0.	

2. The above mentioned lands were granted in Inam to Janardan Chango Yallurkar, the deceased grandfather of the Pltff. in or about the year 1864 A.D. by the then Jahagirdars of Kurundwad Jr. State, the grantee was to enjoy the lands as owner permanently from generation to generation as per terms of the grant. But as the lands were not in possession of the State, the Darbar could not hand over to the grantee the actual possession of these lands. However the original grantee succeeded in securing the actual possession of these lands by making private arrangements with the then occupants. Thus the Pltff. who is the grandson of the original grantee, has acquired complete title over all the suit lands on the strength of the original grant and also on the strength of his continuous and open possession as owner for a period of more than 12 years adverse to the whole world. On both these grounds the pltff. has become the full owner of the suit lands.

3. The then Jahahgirdars picked up some quarrel and attached and resumed the possession of the suit lands about 25 years ago. The Pltff. thereafter made attempts for authorities and Bombay Govt. in this matter, but the pltff. could not achieve his object. This was the only way left open to the pltff. as he could not file a regular civil suit in a Court of law against the Govt. of the State in accordance with the laws prevailing then in the State. However recently the Durbar has kindly given permission to all persons to file a Civil suit against the Govt. of the State by a Notification published in the issue of the State Gazette dt. 10th March 1946. Thus the cause of action has been accrued on that day to file this suit for poss-session of the suit lands, and for future mesne profits against the Govt. and other defts. who are to-day in actual possession of the suit lands.

4. The other defts. Nos. 2 to 7 are respectively in poss-session of the respective lands as shown in para No. 1 above. They say that they have purchased these lands from the the rulers of the Kurundwad Jr. State who are now re-presented by Deft. No. 1. The Pltff. denies in toto their alleged rights. Besides, they can never have better title than the deft. No. 1. Moreover all defts. already aware about the Pltff's right before they derived their title from the State. The defts. cannot have better title than the pltff. All Defts. are, therefore, trespassers as against the Pltff. Defts. Nos. 8 to 11 are the tenants of Defts. Nos. 2 to 5 respectively. Defts. Nos. 12 to 18 are the tenants of the defendant No. 6.

5. The Pltff, therefore, files this suit for possession of the suit lands and future mesne profits. The Deft. No. 1 has been served on 9th Mar. 1949 with two months' notice as required by Sec. 80 of the C.P.C. The cause of action for the suit arose on 10th March 1946, the date of the publication of the above-mentioned State Proclamation in the State Gazette. The Pltff. submits that the period of limitation for filing this suit is 12 years commencing from 10-3-46. Even assuming that this period is for 3 years only still the suit is filed within the period allowed by the Law of Limitation as the Pltff. is entitled to add to this period the period of 2 months required for the notice and the period during which the Court remained closed for the summer vacation.

6. The suit lands are situated within the spl. jurisdiction of this court, and the cause of action also arose within the jurisdiction of this Court. Therefore, this Court has jursidction to try this Suit.

7. The total assessment of the suit lands is Rs. 122-8-0. On multiplying it by 7½ it comes to Rs. 918-12-0. This is

This is. . . . .
the valuation for the purpose of paying Court Fee. The valua-
-tion of thissuit for jursiddction is Rs.15,000/- the market
value of the lands.

8. The Pltff, therefore,prays that:-

(1) the possession of the lands mentioned in para No.1, of the plaint should be given to the Plaintiff;

(2) The future mesne profits should be determined and awarded to the pltff;

(3) The costs of this suit should be given to the pltff;

(4) Any other relief to which the pltff.may be found entitled should also be given;

(5) The pltff.shouldbe allowed to amend the plaint if the necessity arises.

- - - - - -

The pltff. prays that the decree may be passed accordingly .

Dated 8-8-1949.

I, Vinayak Vishnu Yallurkar, residing at Vadagaon, do solemnly declare to-day at Vadagaon, that what is stated in the above paras No.1 to 8 is correct to my own information and belief.

Dated:

Belgaum Civil Suit No. 137/1949.

This is a suit for possession of suit lands with future mesne profits.

The suit is defensible.

The defence of the suit may therefore be sanctioned on the lines of the accompanying brief.

2/11

I agree

7/11.

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
15 NOV 1950

Please see p. 2 of the grounds and make the necessary corrections.

15/11

Necessary corrections are made.

20/11

In the Court of the Civil Judge, Senior Division, Belgaum.

Civil Suit No. 137 of 1949.

Vinayak Vishnu Yallurkar of Vadagaon Taluka Yallur -- Plaintiff

Vs.

The Collector of Belgaum and Chief Administrator) of the Kurandwad Junior State and 17 others.) -- Defendants.

Claim Rs. 918-12-0 for court fees.
Rs. 15,000/- for jurisdiction.

Herein the written statement of Defendant No. 1 is as follows:-

1. This defendant denies the plaintiff's suit in toto.

2. The suit being filed against this defendant - public officer, by his official name, is not maintainable in law.

3. It is admitted by the plaintiff that the subjects of the then Kurandwad Junior State had no right to sue the State Government in the Civil Court of the State and that such right was only conferred on 10t March 1946 by the State notification order. Such order, therefore, could not operate with restrospective effect, so as to entitle the plaintiff to sue the State Government in respect of the cause of action that is said to have arisen prior to 10th March 1946. The plaintiff therefore has no right whatsoever to sue the successor Government in respect of the same cause of action.

4. Even assuming that the said order of resumption passed by the Ruler Rajasaheb is an illegal order, still, the successor Government namely, the Government of Bombay, cannot be sued for the illegal ~~xxxx~~ acts committed by the Ruler of the State. The plaintiff has, therefore, no right to file the present suit against this defendant namely the Government of Bombay. The State's liability for such illegal acts alleged by the plaintiff, has not been undertaken or accepted by the Government of Bombay.

5. It is clear from the record that the grant of the suit lands in or about the year 1864, is of the soil and not of Royal share of the Revenue. The order resuming the actual possession of the lands is, therefore, justifiable. That the possession of the suit lands was secured by the plaintiff's predecessor independently, from the occupants is denied. The allegations made by the plaintiff in para. 2 of the plaint are not admitted. The plaintiff should be put to strict proof of the same.

6. The contention made by the plaintiff, that the grant in question is an absolute grant and the Ruler had no right to revoke it,

is not correct. The grant of 1864 in question is 'Jadid'. The Sovereign Power i.e. the Ruler has always, the inherent right to revoke the 'Jadid' grants. The Civil Court cannot question this right of the Ruler to deal with these Inam grants. The order of Resumption passed by the Ruler in 1919 and the order for taking over possession of the suit lands dated the 5th September 1922 are perfectly valid they being based on proper and valid grounds. Hence the present suit against this defendant is not maintainable.

7. The order of Resumption was passed in 1919 and the suit lands were taken over from the plaintiff in 1922 or thereabout. The plaintiff's possession of the suit lands from the date of the grant to the date of ~~1864~~ resumption was permissive in nature only and never adverse to the State. The possession of a private man for however long duration is nugatory before a paramount resumption. The plaintiff cannot, therefore, claim title to suit lands by adverse possession. The allegations made by plaintiff in this connection in para. 2 of the plaint are denied.

8. The Ruler of the then State had the inherent right to revoke the grant and ~~as such~~, he was also competent to dispose of it in the best manner he deemed fit. The plaintiff, therefore, cannot maintain this suit

9. The plaintiff's allegation that the right to sue the State was conferred on the subjects of the State in 1946 and that this suit is therefore in time etc., is not correct. The order granting the said right, cannot obviously be retrospective in operation. The order of Resumption of the Inam lands in question was passed in 1919 and in pursuance thereof, the possession of the suit lands, was taken over from the plaintiff in 1922. Plaintiff has filed this suit in 1949. The suit is barred by Limitation under Article 142 of Schedule I to the Limitation Act 1908.

10. The suit is barred under the provision of the then prevailing laws of the State - especially of the Revenue Jurisdiction Act, then prevailing in the State.

For these reasons, the plaintiff's suit be dismissed with costs.

Belgaum,
1951

District Government Pleader,
Belgaum.

I, B. V. Jakati, District Government Pleader, Belgaum, on behalf

of the defendant No. 1, do hereby, solembly affirm that what is stated above in the paragraphs 1 to 10 is true to the best of the information obtained and believed to be true.

District Government Pleader,
Belgaum.

W.S. of deft Ex. 80.
1

W.S. of deft Ex. 64.
2

W.S. of defts " 81
3A to D

W.S. of deft " 52
4

" deft " 65
5

" deft " 68
6

" deft " 43
10

" defts 7 , 8 , 9 , 11 to 18 are exparte.

Ex.

I S S U E S.

1. Whether plff proves that the Inam Grant to his family was absolute, being of the soil and hereditary and - permanently ?

2. Whether plff's family had become owner by adverse possession as alleged in para 2 of plaint ?

3. Whether the resumption of the grant by the Jahagirdar was illegal ?

4. Whether the Durbar orders dated 10-3-1946 have any - retrospective effect and entitles the plff to file this suit ?

5. Whether the present suit can lie against Bombay State for ill-acts, if any, committed by the former Kurandwad State Authority?

6. Whether plff's suit is within time for reasons stated in para 5 of plaint ?

7. Whether plff's suit is within time under article 142 of Limitation Act ?

8. Whether defts 2, 3A to 3D, deft 4, deft 5, deft 6 have become owner of their respective properties by means of adverse possession ?

9. Whether the above defts prove that they or their predecessors in-title are and were bonafide transperrees for value without notice ?

10. Whether the Jahagirdar is a necessary party as contended by deft 4 in Ex. 52.

11. Whether the suit is bad on account of multifarious ?

12. Whether the suit is barred under Revenue Jurisdiction Act

13. Whether defts 3A to 3D , deft 4, deft 5, and deft 6 - prove their improvement charges as contended ? is plff liable to pay them to respectively defts before getting possession from them.

P.T.O.

14. Is the suit vexatious.? If so, what compensatory costs can be awarded to deft 4 ?

15. Whether plff is entitled to possession ?

No more sought.

22-1-1951.

Belgaum

sd. N.V.Ranasubhe.
Civil Judge, S.Dn, -
Belgaum.

A/ *Suits:*
Belgaum.
For possession of the suit lands with future mesne profits. (A

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 477.

Bombay Castle, 8th January 1951.

B) Letter from the Collector of Belgaum, No. LAW. 851, dated the 15th July 1950—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 137 of 1949.

Vinayak Vishnu Yallurkar ... ... Plaintiff;

versus

The State of Bombay and others ... ... Defendants.

Memorandum to the District Government Pleader, Belgaum, No. 16276, dated the 21st November 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

G. R., No. 477, L. D., dated the 8th January 1951.

To

* The Revenue Department,
* The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

* With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

45
1943

BELGAUM CIVIL SUIT NO. 137 OF 1949.

Chronological Statement of Facts.

1. This is a suit for possession of marginally

	Survey Nos.	
Majgaon	... 89	
	183	
	198	noted lands with future mesne
Old Belgaum	... 55	
Halge	... 337	
	338	
Vadagaon	... 82	profits.
	102	

2. The lands in question were granted in *inam* in 1864 by the then Jahagirdars of Kurundwad State to one Janardan Chango Kulkarni—the grandfather of the plaintiff. *Sanad* in respect of this grant was issued on 16th May 1864.

3. In 1896, or thereabout, the original acquirer of the *inam*—Janardan—died leaving behind his only son, Vishnu. Pending the heirship inquiry, Vishnu died, leaving his only son, Vinayak, the plaintiff in the suit. His name was entered to these lands under H. Order No. 548/1316, dated 9th October 1906.

4. In 1919, these lands were resumed by the Rajasaheb of Kurundwad Junior State and an order for taking over possession of the lands in dispute was issued under H. Order No. 122/1332, dated 5th September 1922. These lands were, accordingly, taken over by the State. The plaintiff then submitted a revision application dated 23rd May 1919 to the Resident at Kolhapur and Political Agent for the S. M. Country States, but it was rejected on the ground that the Chief had every right to cancel the grant and order the resumption of lands. Against this order, the plaintiff submitted a memorial dated 11th September 1922 to the Government of India but his request was refused on 8th January 1924.

5. On 9th March 1949, the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 8th August 1949, he filed this suit in the Court of the Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

1. *Limitation.*—The order of resumption of the *inam* lands was passed in 1919 and in pursuance thereof the possession of the suit lands was taken over from the plaintiff. He filed this suit in 1949. The suit is, therefore, time-barred under article 142 of Schedule 1 to the Limitation Act, 1908. The plaintiff contends that the right to sue

the State Government in the Civil Courts of the State was conferred on the subjects of the State only in 1946 and that the suit is in time, having been filed within 12 years therefrom. The order, granting the said right, cannot obviously be retrospective in operation. It would, therefore, be contended that the suit is barred under article 142 of Schedule 1 to the Limitation Act, 1908.

2. *Suit not maintainable.*—The suit is filed against the Collector of Belgaum and the Chief Administrator, Kurundwad Junior State. It is a suit against a public officer by his official name. It is, therefore, not maintainable (*vide* I.L.R. 51 Bom., p. 749).

3. The next question is whether irrespective of the objection, as regards limitation and frame of the suit, the plaintiff has any right to sue the Provincial Government on the cause of action stated in the plaint. It is admitted in the plaint that at the time, when cause of action arose, the subjects of the State had no right to sue the State Government in the Civil Court of the State and that such right was only conferred on 10th March 1946. Obviously, however, such order could not operate with retrospective effect so as to entitle the plaintiff to sue the State Government in respect of the cause of action which occurred prior to the relevant date, unless the order itself expressly provides that it is to have retrospective effect. If, therefore, the plaintiff had no right to sue the State Government at the date of the cause of action, it cannot sue the successor Government in respect of the same cause of action.

4. Secondly, even assuming that the order in question entitles the plaintiff to sue the State Government, it can still be contended that the successor Government cannot be sued for the illegal acts, committed by the ruler of the State. In other words, if the order of resumption passed by the ruler is an illegal order, the plaintiff has no right to seek any relief in respect of that order against the Government of Bombay. It is an established principle that upon a cession of territory, an inhabitant of a ceded territory can make good in the municipal Courts established by the new sovereign only such rights as that new sovereign had recognised and not the rights enjoyed under the rule of his predecessors (Vajesing *v.* Secretary of State 26 Bom.L.R. 1143; Sayad Asrar Ahmed *v.* Darge Committee of Ahmir 49 Bom. L.R., p. 235). Therefore, assuming that the order passed by the Rajasaheb was illegal, the plaintiff has no right to bring this action against the successor of the ruler except under the agreement of merger, between the State and the Provincial Government, the State's liability for such illegal acts has not been undertaken or accepted by this Government.

5 It has been contended by the Plaintiff that the grant of 1864 was only the grant of the *inam*

right and that the grantee secured the actual possession of the lands by making private arrangements with the occupants. It may be seen from the *sanad* issued to Janardan Chango that the words ordinarily used to indicate grant of soil viz. " water, grass, wood, stones, mines and hidden treasures " have been specifically mentioned and also the words " present and future assessment ". Secondly, in the whole body of the grant, the word " land " is mentioned and not the Royal share of Revenue. Thirdly, because the grant was of the soil, the plaintiff could succeed in securing possession of the lands. If, at the time of grant, the lands had been in possession of occupants, the plaintiff could not have been let in possession thereof. The plaintiff has not produced any other deeds to show his arrangement with the persons in possession of these lands. It is clear from the *inam patraks* and the Government correspondence at the time of the grant, the grant was of the soil and not of the Royal share of Revenue. The plaintiff's allegation in this behalf that he secured possession independently from the occupants, should be specifically denied. It should, therefore, be contended that the grant of 1864 being of the soil and not the Royal share of Revenue, the order, resuming the actual possession of the lands, was justifiable.

6. *Secondly*, it has been contended that as the grant in question was an absolute grant, the ruler had no right to revoke it. It may be seen from the *inam patraks* that the grant of 1864 was *jadid*. It is clear from the same document that no settlement was effected in the case of these *jadid inam* lands. The sovereign power, which is the basis of this tenure has not, in this case, at least, by its legislative constituent, bound itself by rules, creating thereby a new quality of durability. In the absence of any limitation on the sovereign power, the ruler has the inherent right to revoke the *jadid* grants. The incidents normally applicable to private grants cannot govern these *inam* grants. The Civil Court cannot question or challenge this right of the ruler to deal with these *inam* grants. It should, therefore, be contended that the order of resumption passed by the ruler in 1919 is a perfectly valid order and the present suit is, therefore, not maintainable.

7. The next contention of the plaintiff is that he is the owner of the suit property by adverse possession. The order of resumption was passed in 1919 and the lands were taken over from the plaintiff in 1922 or thereabout. The plaintiff's possession of these lands from the date of the grant to the day of resumption was under the grant of 1864, permissive in nature only and never adverse to the State. It is not the plaintiff's case that in spite of the resumption order, he continued to be in possession of the suit lands for a full statutory period. Besides, possession of a private man for however long duration is nugatory before a paramount resumption (*vide* Daulatrao *v.* Province

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of Bombay 49 Bom.L.R. 270). It should therefore be contended that. the plaintiff cannot claim title to the suit lands by adverse possession.

8. As the ruler had inherent right to revoke the grant, he was also competent to dispose it of in the best manner, he deems fit. The plaintiff, therefore, cannot maintain this suit.

9. It is not clear from the record whether Revenue Jurisdiction Act or Act of similar nature was in force in Kurundwad Junior State. The District Government Pleader should verify and raise the necessary defences in the suit.

For these reasons, it should be urged that the plaintiff's suit fails and should be dismissed with costs.

S. Belgaum 1/57
New

4/6/57

(DIST: BELGAUM.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

First Appeal No. 380 of 1952.

1. Vinayak Vishnu Yelurkar of Madhavpur-
Vadgaon, Dist: Belgaum. ... ... Appellant.
(Orig. Plff.)

A g a i n s t.

1. The State of Bombay.
2. Sitaram Nana Dekare of Vadgaon,
Dist: Belgaum now residing at Kurundwad
Tal. Shirol, Dist: Kolhapur.
3. [redacted] } Shankar Naik, minors by
4. [redacted] } their guardian Respondent
5. [redacted] ... } No. 6
6. [redacted] Shankar Sindgi of Vadgaon
7. [redacted] Chougule of Thalakwadi.
8. [redacted] Savasappa Kundappa of Shahapur, Acharaya Gally.
9. [redacted] Tayasaheb Chavan of Vadgaon.
10. [redacted] shna Irappa Patil -do-
11. [redacted] Sangappa Mannur of Majgaon,
Taluka Shahapur, Dist: Belgaum.
12. [redacted] Lakappa Kulkambi of -do.
13. Vasudeo Annappa Chougule of Thalakwadi.
14. Belgaum, c/o Diwan Bahadur Chougule Pleader.
14. Chandappa Bellappa Kademani of Halage,
Taluka Belgaum.
15. Bhairu Parasharam Khannukar alias Tarihalkar
of Madhavpur, Bayat Gali, Taluka Belgaum.
16. Bhujanga Kaman a Chatur of Vadgaon, Kapbhari
Galli, taluka Belgaum, Dist: Belgaum.
17. Parashram Fakira Havaldar of Vadgaon , do.
18. Khatru Ananda Birje of Vadgaon, taluka: Belgaum
19. Gangaram Thakappa Lokulkar of Patil Gally,
Taluka Shahapur, Dist: Belgaum.

20. Ganapati Ningappa Juvekar of -do-)
21. Parashram Bharmanna Gadhari of -do- ..) Respondents.
(Orig. Defts.1,2,3's heirs, and 4 to18)

Claim Rs. 918-12-0 for Court fee
" " 15,000/- for jurisdiction.

The Appellant abovenamed being aggrieved by the judgment and decree passed by the learned Joint Civil Judge, Senior Division, Belgaum in Civil Suit No. 137 of 1949 on 28-1-1952 begs to file an appeal to this Hon'ble Court and to set forth the grounds of objection to the decree appealed from viz.:-

1. That the decree of the lower Court is contrary to law, evidence and equity in the case.

2. That the findings recorded by the learned Judge on issues Nos. 4,5,6,7,8,13,15 and 16 before him are erroneous.

3. That it was an error to have hold that the Darbar order dated 10-3-1946 is not retrospective in its operation and hence plaintiff could not have filed the suit for the acts of the ruler prior to that date.

4. That the learned Judge has wrongly construed the order and failed to give proper effect to the said order.

5. That it should have been held that the question as to whether the order dated 10-3-1946 is restrospective in its operation or not does not arise in the case in as much as the notification deals with the procedural law which is always restrospective.

6. That even assuming that the said order is not restrospective in its operation, it does not mean that the plaintiff after the year 1946, can't bring the suit against the ruler or any person claiming under him for possession of property if his title is still subsisting.

7. That it should have been noticed that prior to the date

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of notification neither the Ruler of Kurundwad or persons claiming through him had any rights vested in them in respect of the suit properties and they are sought to be taken away by the said notification of 1946.

8. That the ruling in 51 Bom.L.R. 280 relied on by the learned Judge does not apply to the facts of the present case.

9. That it was an error to hold that the Notification of 1919 and 1946 have the force of a statute so as to raise the question whether they are restrospective in their nature or not.

10. That it should have been noted that if the act of the rulers of Kurundwad itself was illegal, as held by the learned Judge, it can in no sense be said that they or the persons now claiming under them acquired any vested rights.

11. That it should have been held that the earlier notification of the year 1919 withheld the procedure laid down in C.P.Code of 1908, which was made applicable to the State, in respect of the right of citizens of Kurundwad State to file suits against the State for the wrongs done to them and the subsequent notification of 1946 removed the bar which was then levied.

12. That it should have been noticed that no new rights were conferred by the notification of 1946 so as to give it the force of a newly enacted statute and hex thus render it only prospective in its nature.

13. That it was an error to have held that the suit of the plaintiff was to get redress against the Government of Bombay for the illegal acts of the rules of the Kurundwad Junior State.

14. That it should have been noticed that plaintiff by his

suit has claimed no relief either by declaration or claiming any relief against defendant No.1 - the State of Bombay.

15. That it should have been noticed that the reliefs claimed by him relate to persons who are now in actual possession of the lands in the suit and it should have been held that defendant No.1 was a proper party for the efficient adjudication of the dispute between the plaintiff and those in actual possession of the same.

16. That the case relied on the learned Judge while considering this issue does not apply to the facts of the case before him.

17. That the question of damages payable by defendant No.1 to those claiming under it in the event of plaintiff's success was never set up either by it or those claiming under it. Hence the Court made out a new case.

18. That the learned Judge has overlooked the admission of defendant No.1 in its written statement that it was the successor of Kurundwad Rulers and in the absence of the agreement entered into by the high contracting parties it should have been held that the defendant No.1 did under-take all the liabilities which the rulers by their act made themselves liable.

19. That in so far the defendant No.1 accepted the liability of payment of Rs. 3900/- which the Kurundwad rulers owed to plaintiff and did in fact paid the same it should have been held that defendant No.1 accepted the liability for all the acts of former Kurundwad rulers, there being no evidence in rebutal of the same.

20. That an adverse inference should be drawn against the Government for failure to produce the agreement which was in its exclusive possession.

21. That it should have been held that the suit of the plaintiff is in time.

22. That it should have been held that the dispossession of the plaintiff in 1928 and the subsequent possession, for a period of more than 12 years can have no effect in law so as to destroy the proprietory and original title of the plaintiff conferred upon him by the grant.

23. That it should have been held that the question of adverse possession does not arise because plaintiff had at no time since the date of dispossession till the date of the notification any right to bring a suit for possession against the ruler who illegally usvrped the property

24. That it should have been noticed that under Section 28 of the Limitation Act, title is lost only when the plaintiff had a right to institute a suit for possession against a trespasser and he did not avail himself of the remedy for the period mentioned in one or the other articles of the Limitation Act.

25. That it should have been held that neither Section 28 of the Limitation Act nor the principles thereof applies to cases, when during the period of alleged dispossession, no suit for possession could have been filed in a Civil Court.

26. That it should have been held that the cause of action for the suit of the plaintiff which was in abeyance since the date of his dispossession in 1928 due to prior notification of 1920 accrued to him for the first time in 1946 when the subsequent notification cancelling the prior one was promulgated.

27. That under these circumstances the suit having brought within 12 years from the date of the accrual of the cause of action the same is in time.

28. That the remarks in I.L.R.43 Madras 185 to the effect viz. that " the language of the third column of the first Schedule should be so interpreted as to carry out the true intention of the legislature, i.e. by dating the cause of action from a date when the remedy is available one, have not been given proper effect.

29. That it view of the remarks in 41 Bom. L.R.1002 viz."The rule of Limitation is a rule of procedure, a brech of the adjective law and does not create or extinguish rights except in asses of acquisition of title to immoveable property by prescription." It is only the remedy by way of a suit that is barred but the right inself continuous to exist", it should have been held that right which the plaintiff had is not extinguished as the remedy by way of suit was not avainable to him and hence the same was not lost to him.

30. That the these circumstances it was an error to have held that defendants 2, 3A to 3D, 4 and 5 and 6 have become owners of the property in their respective possession by adverse possessio

31. That it was an error to have held that Defendants 4 and 6 have improved the lands in their ~~xxx~~ respective possession by spending an amount of Rs. 3000/- each and as such they are entitled to their improvements.

32. That it was an error to have held that they are so entitled after giving a finding that they are not bona-fide purchasers for value without notice of prior claims.

33. That the oral evidence on record as to the improvements effected by defendant Nos. 4 and 6 should not have been believed in the absence of documentary evidence to support the same.

34. That the evidence of the witnesses for defendant No. 6 regarding improvements effected by them should have been disbelieved since they failed to produce the documentary

evidence though summoned to produce the same.

35. That in the absence of positive proof the claim put forth by defendants 4 and 6 regarding improvements is highly excessive.

36. That it was an error to have held that the suit of the plaintiff is bad for want of proper notice under Section 80 of C.P.Code.

37. That it should have been held that the notice addressed to the Collector and Chief Administrators was served on him for and on behalf of the State of Bombay under the powers delegated to him by the latter.

38. That the learned Judge has overlooked proviso to Art. 4 of the Deccan States merger order which clearly empowered the Collector of Belgaum, who was appointed the Chief Administrator of Kurundwadi State, to exercise all the powers, which were exercised by the ruler under any provision of law immediately before the " appointed day" (8-3-1948) for and on behalf of the State of Bombay under the powers deligated by the latter

39. That the learned Judge failed to see that the Kurundwad State lost its territorial entity after the final integration of that State into the province of Bombay in 1949 and till then it was the Collector and the Chief Administrator who for all purposes represented the Government of Bombay and hence the notice served on him was valid and proper.

40. That the plaintiff who was persuing the remedy which was opened to him against the ruler of Kurundwad had filed the suit against the person who succeeded him by the Deccan State's order promlgated by the Government of Bombay and before filing his suit had served the notice on the person who was holding all the powers which the ruler possessed under

delegated powers of the Government of Bombay and hence the said notice is proper and valid.

41. That the learned Judge has not properly appreciated the observations of their Lordships at pp. 867 and 874 of 52 Bom.L.R. 860 in this behalf.

42. That the learned Judge having himself overruled the objection of defendant No.1 to the amendment application, Ex.93, should have held that the notice was proper.

43. That on a reference to the contents of the notice it should have been held that the same was addressed to the Government of Bombay and the suit contemplated was against the Government of Bombay.

44. That the order as to costs is wrong.

45. That proper inferences have not been drawn from the proved facts.

46. That the appellant craves leave to add or amend to or strike out points from the memorandum of appeal.

B O M B A Y.

Dated: 3-4-1952.
10- 1962.

Sd/- M.S.Anikhindi
ADVOCATE FOR THE APPELLANT.

MVG/18.9.

Suits:
Belgaum.

For possession of the suit lands with future mesne profits.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 16602/E
Sachivalaya,
Bombay, 28th July 1955.

Read Government Resolution, Legal Department No.477, dated the 8th January 1955.

Letter from the District Government Pleader, Belgaum

In the Court of the Civil Judge (Senior Division), Belgaum.	: No.494
Civil Suit No.137 of 1949.	: dated the
Vinayak Vishnu Yallurkar ... Plaintiff.	: 21st June
vs.	:
The State of Bombay and others ... Defendants.	: 1955,

stating that the suit noted in the margin was decided by the Joint Civil Judge, Senior Division, Belgaum, on the 28th January 1952, when the following order was passed :-

> "The suit is dismissed. Plaintiff do pay the costs of this suit to Defendants Nos.1,2,3A to 3D and Defendants Nos.4 to 6. Plaintiff to bear his own costs in the suit."

Endorsement from the Government Pleader, High Court, Bombay No.6985 dated the 20th September 1952 stating that the plaintiff in the suit noted in the margin has filed First Appeal No.380 of 1952 and requesting sanction to its defence.

RESOLUTION: (1) The result of the suit is recorded.

(2) Sanction is accorded to the defence of the First Appeal No.380 of 1952 in the High Court, Bombay on the lines of the brief accompanying Government Resolution, Legal Department, No.477 dated the 8th January 1951 and the favourable grounds contained in the judgment of the Joint Civil Judge (Senior Division), Belgaum dated the 28th January 1952.

By order and in the name of the Governor of Bombay,

original

D.P. Shikhare,
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Belgaum,
The Government Pleader, High Court (with a print in F.A. No.380/52).
The District Government Pleader, Belgaum.

80 submitted for signature

40. 27/7 J.S. 27/7 D.S (cmd)

Submitted

J. Klein. S Bdgaum 9/5/

29/7

Supdt 29/7

Compared

S. Belgaum 9/5/
1-8-55